

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANDREW E. ROTH,

Plaintiff,

- against -

DEUTSCHE TELEKOM AG, ET AL.,

Defendants.

25-cv-1137 (JGK)

ORDER

JOHN G. KOELTL, District Judge:

The plaintiff has requested to withdraw his Notice of Voluntary Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), filed on May 30, 2025. See ECF No. 14. The defendants oppose the request. See ECF No. 15.

On March 19, 2025, the Court granted the parties' joint request to stay this case pending the final disposition of two appeals pending before the Second Circuit Court of Appeals. ECF No. 12. On May 23, 2025, the Court of Appeals issued an opinion resolving those appeals and rejected the legal theory underpinning the claims in this case. See Roth v. LAL Family Corp., -- F.4th --, 2025 WL 1479729 (2d Cir. 2025). On May 30, 2025, the plaintiff filed his Notice of Voluntary Dismissal (the "Notice") pursuant to Rule 41(a)(1)(A)(i). ECF No. 13. Because the case had been stayed, the Clerk referred the Notice to the Court for review. But on June 3, 2025, the plaintiff requested to withdraw the Notice and sought to reopen this action while

the plaintiff pursued a petition for a writ of certiorari in the LAL Family appeals. ECF No. 14.

Rule 41 does not permit the plaintiff to withdraw the Notice in this case. Rule 41(a)(1)(A)(i) permits a plaintiff to "dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A)(i). It is well-settled that the filing of a notice of dismissal under Rule 41(a)(1) automatically terminates the lawsuit, and that "[n]o action by the court is necessary to effectuate the dismissal." Thorp v. Scarne, 599 F.2d 1169, 1171 n.1 (2d Cir. 1979); see also Graham Kandiah, LLC v. JPMorgan Chase Bank, N.A., No. 08-cv-6956, 2009 WL 1704570, at *2 (S.D.N.Y. June 18, 2009) ("[T]he plaintiffs' notice of voluntary dismissal took effect without any action by the Court."). Therefore, "notices of dismissal filed in conformance with the explicit requirements of [Rule 41(a)(1)] are not subject to vacatur." Thorp, 599 F.2d at 1176.

Furthermore, as the defendants correctly argue, to permit the plaintiff to withdraw the Notice would be to allow the plaintiff to sidestep Rule 41(a)(1)(B). Although a voluntary dismissal pursuant to Rule 41(a)(1) is without prejudice unless the notice states otherwise, Rule 41(a)(1)(B) provides that the voluntary dismissal of the same claim twice "operates as an


adjudication on the merits." Fed. R. Civ. P. 4(a)(1)(B). If a plaintiff could withdraw a notice of voluntary dismissal, a plaintiff dismissing the same claim for a second time "would be able to avoid the two dismissal rule entirely simply by stating that the second dismissal was 'without prejudice.'" Graham Kandiah, 2009 WL 1704570, at *2.

In this case, the plaintiff's dismissal was without prejudice. If the plaintiff wishes to reassert his claims, the plaintiff can refile them in a new action. Therefore, the plaintiff's request to withdraw the Notice is **denied**.

The Clerk is directed to close this case.

SO ORDERED.

**Dated: New York, New York
June 7, 2025**



John G. Koeltl
United States District Judge